FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/159994

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 30, 2014, at Racine, Wisconsin.

NOTE: Immediately following the hearing, Petitioner's speech-language pathologist submitted a plan of care for the period of September 1, 2014 to November 30, 2014. (Exhibit 5) With the permission of Petitioner's mother, the plan of care was sent to Theresa Walske, the Department of Health Service's consultant at the Office of the Inspector General for review. Ms. Walske sent an e-mail indicating that the Department of Health Service's position remained unchanged. Her e-mail has been marked as Exhibit 6 and entered into the record.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied the Petitioner's June 9, 2014, request for speech-language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: OIG by letter
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Racine County.

2. On June 9, 2014, Medical Support Services submitted, on behalf of the Petitioner, a request for prior authorization of 24 sessions of speech/hearing therapy and one session of speech/sound language comprehension, at a cost of $3,334.20. This would be for the period from May 2, 2014 to August 31, 2014. (Exhibit 4, pg. 7 and pg. 21)

3. Petitioner's mother was seeking private speech therapy for the summer because an extended school year was not included in the Petitioner's individualized education program (IEP). (Exhibit 4, pg. 9)

4. The long term goals of the requested therapy were:

   a. To increase receptive language skills to age-appropriate levels to allow him to comprehend verbal language in order to engage in his daily routines and experiences.

   b. To increase [redacted]s expressive language and sound production skills to age-appropriate levels in order for him to communicate his wants and needs effectively within his routines and experiences.

   (Exhibit 4, pgs. 19 and 20)

5. The short term goals of the requested therapy were:

   a. Will recall and follow multi-step directions containing components and/or various concepts (i.e. time, qualitative, spatial, quantitative) with 60% accuracy given maximum to moderate cueing.

   b. Demonstrate appropriate use of possessive pronouns (i.e. his/hers, your/my) in structured therapy tasks in 75% of opportunities given moderate to maximum cueing.

   c. Demonstrate appropriate use of irregular plurals (i.e. mice, children) in structured therapy tasks in 60% of opportunities give maximum to moderate cueing.

   d. Recall and state information/personal information (phone, address, etc.) with 80% accuracy given moderate cueing.

   (Exhibit 4, pg. 21)

6. On July 10, 2014, DHS sent the Petitioner and his mother a notice indicating that the requested therapy was denied. (Exhibit 4, pgs. 61-74)

7. On July 10, 2014, DHS sent Medical Support Services notice of the same. (Exhibit 4, pgs. 65-66)

8. The Petitioner's mother filed a request for fair hearing that was received by the Division of Hearings and appeals on August 20, 2014. (Exhibit 1)

9. The Petitioner is an eight-year-old boy with cerebral palsy – right hemiplegia. (Exhibit 4, pg. 14)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

Wis. Admin. Code Wis. Admin. Code § DHS107.18(1)(a) defines covered speech and language pathology services as those services that are, "medically necessary, diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist."

Wis. Admin. Code Wis. Admin. Code § DHS107.18(1)(c) lists the speech procedure treatments that must be performed by a certified speech and language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist:

1. Expressive language:
- **a.** Articulation;
- **b.** Fluency;
- **c.** Voice;
- **d.** Language structure, including phonology, morphology, and syntax;
- **e.** Language content, including range of abstraction in meanings and cognitive skills; and
- **f.** Language functions, including verbal, non-verbal and written communication;

2. Receptive language:
- **a.** Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
- **b.** Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;

3. Pre-speech skills:
- **a.** Oral and peri-oral structure;
- **b.** Vegetative function of the oral motor skills; and
- **c.** Volitional oral motor skills; and Hearing/auditory training:

4. Hearing screening and referral;
- **a.** Auditory training;
- **b.** Lip reading;
- **c.** Hearing aid orientation; and
- **d.** Non-verbal communication.

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;

7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department."

Wis. Admin. Code §DHS107.02(3)(e)

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

In the case at hand, DHS denied the requested therapy because Medical Support Services did not provide sufficient evidence to support a finding that the skills of a speech pathologist were necessary and because the goals therapy did not increase the Petitioner's ability to communicate more independently outside a clinical setting.

The Necessity of a Speech Language Pathologist (SLP)

At the hearing, the Petitioner's SLP, Jenna [redacted], was asked to explain what she was doing with the Petitioner in therapy and why the skills of an SLP were necessary. Ms. [redacted] indicated that during therapy she would ask the Petitioner to complete tasks such as, "Give me the red block" or "Give me the big block" and then she would progress to tasks such as, "Give me the big, red block". When asked why specialized training was necessary for this exercise, Ms. [redacted] stated that a speech therapist would be

able to examine where a breakdown in understanding was occurring, i.e. was the Petitioner not understand, "give me", "red" or "block".

The analysis described by Ms. [redacted] does not seem like a particularly specialized analysis that requires the training and skills of a speech therapist, and the exercises described by Ms. [redacted] do, indeed, seem like something Petitioner's parents could do at home to maintain or build his skills. Accordingly, it is found that DHS was correct it its determination that the requested therapy does not require the skills of an SLP.

Based upon the information provided by Ms. [redacted], the requested therapy might be helpful to the Petitioner, but because the skills of a SLP are not necessary, the requested therapy is neither appropriate, cost-effective, nor medically useful and as such, does not meet the legal definition of what is medically necessary under Wis. Adm. Code. §DHS 101.03(96m).

Goals and Progress

The goals of therapy, as were written in the Plan of Care submitted by Medical Support Services, do not state any expected progress. The Petitioner's base-line is that he needs at least moderate to maximum cues to communicate and the goals established by MSS do not propose to improve that situation at all. I note, as did the DHS consultant, that the goals established by MSS do not necessarily expect the Petitioner to carry over any skills that he might learn, into his home or school environment. Two of the goals even state that they are strictly for the clinical setting. (See Exhibit 4, pg. 21) This again supports DHS's contention that the requested therapy is neither appropriate, cost-effective, nor medically useful and as such, does not meet the legal definition of what is medically necessary under Wis. Adm. Code. §DHS 101.03(96m).

Coordination of Care

The on-line provider handbook located at https://www.forwardhealth.wi.gov/WIPortal contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.

Topic 2781 states:

> BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:
>
> - Avoid duplication of services.
> - Ensure service coordination.
> - Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

Given that the Petitioner does not have an extended school year included in his IEP, Ms. [redacted] was asked whether she talked to the school about Petitioner's speech therapy needs or to determine why the school decided that the Petitioner did not need an extended school year. Ms. [redacted] indicated that she

had not had any direct communication with the Petitioner's school based SLP. Because there has been no actual, direct communication with the school SLP, Medical Support Services has not satisfied the communication requirements for the prior authorization request to be approved. In the absence of such communication, Medical Support Services cannot reasonably conclude that the services for which it seeks approval are an appropriate level of care.

CONCLUSIONS OF LAW

DHS correctly denied the Petitioner's June 9, 2014 request for speech language therapy.

THEREFORE, it is ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of November, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 11, 2014.

Division of Health Care Access and Accountability